



**TOWN OF GRAFTON**  
GRAFTON MEMORIAL MUNICIPAL CENTER  
30 PROVIDENCE ROAD

GRAFTON, MASSACHUSETTS 01519  
(508) 839-5335 ext 1100 • FAX (508) 839-4602  
[www.grafton-ma.gov](http://www.grafton-ma.gov)

**BOARD OF SELECTMEN  
MEETING AGENDA**

May 14, 2018  
Grafton Highschool Auditorium  
6:30 p.m.

**CALL TO ORDER**

**ANNOUNCEMENTS**

**PUBLIC COMMENTS**

**1. SCHEDULE**

- a) Institute Road / Adams Road Contract
- b) Town Meeting

**2. NEW BUSINESS**

**3. SELECTMEN REPORTS / TA REPORTS**

**4. CORRESPONDENCE**

**5. DISCUSSION**

**ADJOURN**

**ITEM 1A: SCHEDULE: INSTITUTE ROAD / ADAMS ROAD CONTRACT**

I MOVE the Board vote to sign the Contract Agreement for Institute Road and Adams Road Drainage Improvements for a total of S\$651,172.35.

**NOTES:**

The Board of Selectmen authorized the Chair to signed the Notice of Award to Borges Construction at their meeting on April 17, 2018. The Performance Bond and the Payment Bond have both been received for this project.

**TOWN OF GRAFTON**  
**INSTITUTE RD & ADAMS RD DRAINAGE IMPROVEMENTS**

**NOTICE OF AWARD**

Dated 4/17/2018

[Certified Mail -- Return Receipt Requested]

TO: Borges Construction, Inc.

(BIDDER)

ADDRESS: 165 Carmelina Circle, Ludlow, MA 01056

Contract: Institute Rd and Adams Rd Drainage Improvements, Grafton, MA  
(Insert name of Contract as it appears in the Bidding Documents)

Engineer's Project No.: \_\_\_\_\_

OWNER's Contract No. N/A

You are notified that your Bid dated 3/28/2018 for the above Contract has been considered. You are the apparent Successful Bidder and will be awarded a Contract for: Installation of drainage systems on Institute Road and Adams Road in Grafton, MA including all the work specified in the bid documents.

(Indicate total Work, alternates or sections  
or Work awarded)

For all Work, at the prices stated in Contractor's Bid, of the Contract Sum of Six hundred fifty-one thousand one hundred seventy-two dollars and thirty-five cents (\$ 651,172.35 ).

Four copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

Four sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within 10 days of the date you receive this Notice of Award.

1. Deliver to the OWNER four fully executed counterparts of the Contract Documents.

NOTICE OF AWARD

Page 1 of 2

2. Deliver with the executed Contract Agreement the Contract security (Bonds) as specified in the Instructions to Bidders (Article 8)
3. Deliver to the Owner a certificate of insurance matching or exceeding the insurance requirement and limits defined in the Instructions to Bidders (Article 13).
4. (List other conditions precedent):

---

---

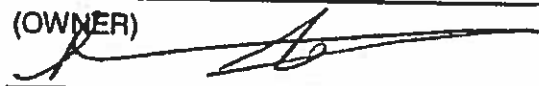
---

---

---

Failure to comply with these conditions within the time specified will entitle OWNER to consider your Bid in default, to annul this Notice of Award and to declare your Bid security forfeited.

Within ten days after you comply with the above conditions and funds have been procured, OWNER will return to you one fully executed counterpart of the Contract Documents.

Town of Grafton  
\_\_\_\_\_  
(OWNER)  
By:   
\_\_\_\_\_  
(AUTHORIZED SIGNATURE)  
Chairman of the Board of Selectmen  
\_\_\_\_\_  
(TITLE)

Copy to ENGINEER

END OF SECTION

**CONTRACT AGREEMENT FOR  
INSTITUTE RD AND ADAMS RD DRAINAGE IMPROVEMENTS  
TOWN OF GRAFTON, MASSACHUSETTS**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between Borges Construction, Inc. hereinafter called the "Contractor" and the Town of Grafton, a municipal corporation located in Worcester County Massachusetts, hereinafter called the "Town".

WITNESSETH: That the Contractor and the Town for the consideration hereinafter named agree as follows:

**ARTICLE 1 - SCOPE OF SERVICES**

The Contractor shall provide all materials, labor, tools, equipment, vehicles, bonds and insurance to undertake the INSTITUTE RD AND ADAMS RD DRAINAGE IMPROVEMENTS PROJECT (hereinafter, the "Project") under the direction of the Town Administrator as outlined in the "CONTRACT DOCUMENTS FOR INSTITUTE RD AND ADAMS RD DRAINAGE IMPROVEMENTS".

The Contractor cannot assign the performance of this Contract to another party without the prior express written consent of the Town Administrator on behalf of the Town.

**ARTICLE 2 - THE CONTRACT AMOUNT**

In consideration for the Contractor's performance of the Project, the Town agrees to pay the Contractor the sum of Six hundred fifty-one thousand one hundred seventy-two dollars and thirty-five cents (\$651,172.35) as set forth in the Contractor's bid dated 3/28/2018 (hereinafter, the "Contract Price"). In the absence of a specific payment schedule, the Contractor may periodically submit invoices, itemizing services for which compensation is due. In the event that this Agreement provides for reimbursement by the Town for specified expenses, the Contractor shall submit itemization of such proposed expenses (along with documentation) with the invoice to the office of the Town Administrator. The Town will make progress payments (and reimbursement for expenses, if applicable) to the Contractor upon presentation of an acceptable invoice within thirty days after the end of each month.

The Contractor expressly understands and agrees that payment under this contract is subject to appropriation or availability of other funds, if applicable (e.g., state or federal grants).

**ARTICLE 3 - THE CONTRACT DOCUMENTS**

The Contract Documents shall consist of all the documents contained in the Project Manual including the executed versions of the following documents:

- Form for General Bid with Attachments "A" and "B"
- Bid Bond

- Bidder's Reference Form
- Notice of Award
- Contract Agreement
- Performance Bond
- Payment Bond

In addition, the Contract Documents shall include the following drawings:

1. Title Sheet & Index (Sheet 1)
2. Legend & Abbreviations (Sheet 2)
3. Typical Sections & Pavement Notes (Sheet 3)
4. Construction Plans (Sheets 4-13)
5. Profiles (Sheets 14- 24)
6. Sign Summary (Sheet 25)
7. Temporary Traffic Control Plans (Sheets 26-28)
8. Construction Details (Sheets 29-31)

All addenda issued during the bid phase shall also be considered part of the Contract Documents.

#### ARTICLE 4 – TIME FOR PERFORMANCE

The Contractor shall commence work on the Project promptly after the Town issues a written Notice to Proceed to the Contractor. The Contractor shall diligently prosecute the Project using sufficient labor and shall bring the Work to Substantial Completion within ninety (90) calendar days of said date the Notice to Proceed is issued. The Contractor shall promptly notify the Town Administrator (or a person designed by him) that the work has been completed and make the Project available for inspection. Final Completion shall be forty-five (45) calendar days from the actual date of Substantial Completion. The Contractor agrees that the Town will not be liable for damages for delay.

#### ARTICLE 5 – LIQUIDATED DAMAGES

The Owner has determined that its damages resulting from the Contractor's failure to complete the Work to Substantial Completion within the Contract time will be difficult or impracticable to ascertain. Accordingly, the Contractor shall pay to the Owner the sum of \$700.00 per day as liquidated damages in the Contract for each calendar day that the Contractor is in default of completing the Work to Substantial Completion plus any extensions thereof allowed in accordance with Article 10 of the General Conditions. Such monies shall be paid as liquidated damages, and not as a penalty, to cover losses and expenses to the Owner resulting solely from the fact that the Work is not completed on time. Liquidated damages or a portion thereof may be waived by the Owner if the Contractor submits evidence satisfactory to the Owner that the delay was caused solely by conditions beyond the control of the Contractor and that the Owner has not suffered any damages because of said delay.

#### ARTICLE 6 - LIABILITY

The Contractor shall be solely responsible for any damage to real and personal property suffered, whether such damage is caused by the Contractor, its agents, servants,

employees, or its equipment. The Contractor shall further be solely responsible for all personal injury and death claims resulting from negligence or wrongful acts of the Contractor, its agents, servants, employees and for all such injuries or claims arising from a malfunction of its equipment. The Contractor further agrees to indemnify and hold the Town harmless against any and all such claims arising out of the Contractor's performance under this contract, including the payment of attorney's fees and defense costs.

#### ARTICLE 7 - WORKER'S COMPENSATION AND UNEMPLOYMENT INSURANCE

The Contractor's employees, servants and agents shall be deemed not to be Town's employees for either worker's compensation or unemployment insurance purposes, or any other purpose.

#### ARTICLE 8 - CERTIFICATIONS

The Contractor agrees to obtain a certificate of good standing from the Massachusetts Department of Revenue and provide it to the Town before the Town issues the Notice to Proceed.

#### ARTICLE 9 - NOTICES

The parties (or their sureties or other representatives) shall give any notice under this contract in writing by first class mail or certified mail addressed as follows:

As to the Town of Grafton:

Mr. Timothy McInerney  
Town Administrator  
Grafton Memorial Municipal Center  
30 Providence Road  
Grafton, MA 01519

As to the Contractor:

Mr. Abilio A. Borges  
President  
Borges Construction, Inc.  
165 Carmelina Circle  
Ludlow, MA 01056

#### ARTICLE 10 - ENTIRE AGREEMENT

This document, together with the referenced Contract Documents, constitutes the entire agreement between the Town and the Contractor. No changes or modifications to the Contract may be made without the signed agreement of the parties.

#### ARTICLE 11 - APPLICABLE LAW

The law of the Commonwealth of Massachusetts shall apply to the interpretation or enforcement of this Contract, which may be enforced by either party only in a Massachusetts court of competent jurisdiction. The laws and regulations of the Commonwealth of Massachusetts and the by-laws of the Town of Grafton related to work performed on public works projects are incorporated by reference and made a part of this Contract.

#### ARTICLE 12 - SIGNATURES AND EFFECTIVE DATE

CONTRACT AGREEMENT

Page 3 of 4

Three original signed copies of this Contract will be executed (two for the Town, one for the Contractor), and each party represents that its signatories have the authority to enter into this Contract.

The Contract shall take effect on the date that the last signature listed below (including a majority of the Town's Board of Selectmen) has been obtained.

IN WITNESS WHEREOF, SAID TOWN OF GRAFTON has caused this contract to be executed in its name and behalf by the Board of Selectman and the CONTRACTOR has executed this agreement.

TOWN OF GRAFTON  
BOARD OF SELECTMAN

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
APPROVED AS TO AVAILABILITY OF FUNDS

\_\_\_\_\_  
Town Accountant (Date)

\_\_\_\_\_  
CONTRACT APPROVED AS TO FORM ONLY

\_\_\_\_\_  
Town Counsel (Date)

CONTRACTOR

Albino A. Borges  
Signature

Borges Construction Inc  
Company Name

President  
Title

5/8/18  
(Date)

165 Carmelina Circle  
Address

Ludlow MA 01056  
City, State, Zip



ACORD™

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/27/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

## PRODUCER

USI Insurance Services LLC  
475 Kilvert Street, Building B  
Suite 205  
Warwick, RI 02886

## CONTACT

NAME: Lindsay Gardella

PHONE (A/C, No, Ext): 855 874-0123

FAX (A/C, No): 877 484-4772

E-MAIL ADDRESS: lindsay.gardella@usi.com

## INSURED

Borges Construction Inc.  
165 Carmelinas Circle  
Ludlow, MA 01056

## INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : National Fire and Casualty Company

41068

INSURER B : American Zurich Insurance Company

16535

INSURER C : Selective Insurance Company of America

12572

INSURER D :

INSURER E :

INSURER F :

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WYD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$10k deductible GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	42GLO303304	01/29/2018	01/29/2019	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$- PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	A9105023	01/29/2018	01/29/2019	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$10,000			42UMO303313	01/29/2018	01/29/2019	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	6ZZUB7H922409	02/18/2018	02/18/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Leased/Rented Equipment			S2262057	01/29/2018	01/29/2019	\$250,000 Limit \$2,500 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 RE: Institute Rd. and Adams Rd. Drainage Improvements, Grafton, MA.

## CERTIFICATE HOLDER

Town of Grafton  
30 Providence Road  
Grafton, MA 01519

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



Bond No. S456826

# Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

## Performance Bond

### CONTRACTOR:

(Name, legal status and address)

Borges Construction, Inc.  
165 Carmelinas Circle  
Ludlow MA 01056-3160

### SURETY:

(Name, legal status and principal place of business)

Employers Mutual Casualty Company  
P.O. Box 712  
Des Moines IA 50306-0712  
Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

### OWNER:

(Name, legal status and address)

Town of Grafton  
30 Providence Road  
Grafton MA 01519

### CONSTRUCTION CONTRACT

Date: April 17, 2018

Amount: \$ 651,172.35

Six Hundred Fifty One Thousand One Hundred Seventy Two Dollars and 35/100

### Description:

(Name and location)

Institute Rd and Adams Rd Drainage Improvements

### BOND

Date: April 30, 2018

(Not earlier than Construction Contract Date)

Amount: \$ 651,172.35

Six Hundred Fifty One Thousand One Hundred Seventy Two Dollars and 35/100

Modifications to this Bond:

☒ None

☐ See Section 16

### CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Borges Construction, Inc.

### SURETY

Company:

(Corporate Seal)

Employers Mutual Casualty Company

Signature:

Abilio A. Borges

Name Abilio A. Borges

and Title: President

Signature:

Gail M. Perrin

Name

Gail M. Perrin

and Title: Attorney-in-Fact



(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

USI Insurance Services, LLC.

123 Interstate Drive

West Springfield MA

855-874-0123

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

01089

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### § 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

---

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_  
(Corporate Seal)

**SURETY**

Company: \_\_\_\_\_  
(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address \_\_\_\_\_

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address \_\_\_\_\_

Bond No. S456826

# Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

## Payment Bond

### CONTRACTOR:

(Name, legal status and address)

Borges Construction, Inc.

165 Carmelinas Circle

Ludlow

MA

01056-3160

### SURETY:

(Name, legal status and principal place of business)

Employers Mutual Casualty Company

P.O. Box 712

Des Moines

IA

50305-0712

Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

### OWNER:

(Name, legal status and address)

Town of Grafton

30 Providence Road

Grafton

MA

01519

### CONSTRUCTION CONTRACT

Date: April 17, 2018

Amount: \$651,172.35

Six Hundred Fifty One Thousand One Hundred Seventy Two Dollars and 35/100

### Description:

(Name and location)

Institute Rd and Adams Rd Drainage Improvements

### BOND

Date: April 30, 2018

(Not earlier than Construction Contract Date)

Amount: \$651,172.35

Six Hundred Fifty One Thousand One Hundred Seventy Two Dollars and 35/100

Modifications to this Bond:

☒ None

☐ See Section 18

### CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Borges Construction, Inc.

### SURETY

Company:

(Corporate Seal)

Employers Mutual Casualty Company

Signature:

Abilio A. Borges

Name: Abilio A. Borges

and Title: President

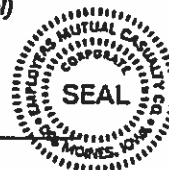
Signature:

Gail M. Perrin

Name:

Gail M. Perrin

and Title: Attorney-in-Fact



(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

### AGENT or BROKER:

USI Insurance Services, LLC.

123 Interstate Drive

West Springfield MA

01089

855-874-0123

### OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.



§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_  
(Corporate Seal)

**SURETY**

Company: \_\_\_\_\_  
(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address \_\_\_\_\_

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_  
Address \_\_\_\_\_

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

### KNOW ALL MEN BY THESE PRESENTS, that:

1. Employers Mutual Casualty Company, an Iowa Corporation
2. EMCASCO Insurance Company, an Iowa Corporation
3. Union Insurance Company of Providence, an Iowa Corporation
4. Illinois EMCASCO Insurance Company, an Iowa Corporation

5. Dakota Fire Insurance Company, a North Dakota Corporation
6. EMC Property & Casualty Company, an Iowa Corporation
7. Hamilton Mutual Insurance Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

Gail M. Perrin

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the following Surety Bond:

Surety Bond Number:

Principal : Borges Construction, Inc.

Obligee : Town of Grafton

and to bind each Company thereby as fully and to the same extent as if such Instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

### AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

**RESOLVED:** The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 1st day of April, 2017.

Seals



*Bruce G. Kelley*  
Bruce G. Kelley, Chairman  
of Companies 2, 3, 4, 5 & 6; President  
of Company 1; Vice Chairman and  
CEO of Company 7

*Todd Strother*  
Todd Strother  
Vice President

On this 1st day of April, 2017 before me a Notary Public in and for the State of Iowa, personally appeared Bruce G. Kelley and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the Chairman, President, Vice Chairman and CEO, and/or Vice President, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Bruce G. Kelley and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2019.

*Kathy Loveridge*  
Notary Public in and for the State of Iowa

### CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 1st day of April, 2017, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 30th day of April, 2018

*J. D. Clough*  
Vice President